UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ MAY 0 9 2006 ★
BROOKLYN OFFICE

DWAYNE COOPER,

Plaintiff,

COMPLAINT

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, DET. JAMES MEEHAN, SGT. GREGORY MAROTTA, DET. "JOHN" JOHNSON, LT. "JOHN" HAMMOND, DET. "JOHN" GORMAN, P.O. "JOHN" BATTAGLIA, P.O. "JOHN" BONO, UNDERCOVER # 3215, UNDERCOVER # 1534, and P.O.s JOHN and JANE DOE #1-10, individually and in their official capacities, (the names John and Jane Doe being fictitious, as the true names are presently unknown),

CV 06 2139

VITALIANO

Defendants.

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MATSUMOTO, M.J.

Plaintiff DWAYNE COOPER, by his attorney, ROSE M. WEBER, complaining of the defendants, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of his civil rights, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, and the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343.

VENUE

4. Venue is properly laid in the Eastern District of New York under U.S.C. § 1391(b), in that this is the District in which the claim arose.

JURY DEMAND

5. Plaintiff respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

6. Plaintiff DWAYNE COOPER is an African-American male, a citizen of the United States, and at all relevant times a resident of the City and State of New York.

7. Defendant THE CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant THE CITY OF NEW YORK maintains the New York City Police Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the New York State Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipal corporation, City of New York.

9. That at all times hereinafter mentioned, the individually named defendants DET. JAMES MEEHAN, SGT. GREGORY MAROTTA, DET. "JOHN" JOHNSON, LT. "JOHN" HAMMOND, DET. "JOHN" GORMAN, P.O. "JOHN" BATTAGLIA, P.O. "JOHN" BONO, UNDERCOVER # 3215, UNDERCOVER # 1534, and P.O.s JOHN and JANE DOE #1-10 were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

10. That at all times hereinafter mentioned the defendants, either personally or through

their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

11. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

12. Each and all of the acts of the defendants alleged herein were done by said defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

FACTS

13. On March 26, 2005, at approximately 3:15 p.m., plaintiff DWAYNE COOPER was lawfully present in front of a bodega located at 3214 Mermaid Avenue, in the County of Kings, in the City and State of New York.

14. At aforesaid time and place, plaintiff DWAYNE COOPER was suddenly accosted by members of the New York City Police Department.

15. Defendants handcuffed plaintiff DWAYNE COOPER and placed him under arrest on drug charges, despite defendants' knowledge that they lacked probable cause to do so.

16. While transporting plaintiff DWAYNE COOPER, defendants pulled over, removed plaintiff from the van, and performed a cavity search.

17. Plaintiff DWAYNE COOPER was then transported to the 60th Precinct of the New York City Police Department, in Brooklyn, New York.

18. While at the 60th Precinct, plaintiff DWAYNE COOPER was subjected to an unlawful strip search.

19. Plaintiff DWAYNE COOPER was then transported to Brooklyn Central Booking.

20. Plaintiff DWAYNE COOPER was held and detained in police custody for approximately thirty-two hours.

21. Defendants initiated criminal proceedings against plaintiff DWAYNE COOPER despite defendants' knowledge that they lacked probable cause to do so.

22. During the period between March 26, 2005 and February 15, 2006, plaintiff DWAYNE COOPER was required to make numerous court appearances to defend himself in the criminal proceedings that defendants had initiated against him.

23. On or about February 15, 2006, plaintiff DWAYNE COOPER was acquitted of all charges.

24. As a result of the foregoing, plaintiff DWAYNE COOPER sustained, *inter alia*, emotional distress, embarrassment, and humiliation, and deprivation of his constitutional rights.

FIRST CLAIM FOR RELIEF
DEPRIVATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983

25. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "24" with the same force and effect as if fully set forth herein.

26. All of the aforementioned acts of defendants, their agents, servants and employees, were carried out under the color of state law.

27. All of the aforementioned acts deprived plaintiff DWAYNE COOPER of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

28. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with all of the actual and/or apparent authority attendant thereto.

29. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the

rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

30. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

SECOND CLAIM FOR RELIEF
FALSE ARREST UNDER 42 U.S.C. § 1983

31. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "30" with the same force and effect as if fully set forth herein.

32. As a result of the aforesaid conduct by defendants, plaintiff DWAYNE COOPER was subjected to an illegal, improper and false arrest by the defendants and taken into custody and caused to be falsely imprisoned, detained, and confined, without any probable cause, privilege or consent.

33. As a result of the foregoing, plaintiff DWAYNE COOPER's liberty was restricted for an extended period of time, he was put in fear for his safety, and he was humiliated and subjected to handcuffing and other physical restraints, without probable cause.

THIRD CLAIM FOR RELIEF
UNLAWFUL SEARCH UNDER 42 U.S.C. § 1983

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "33" with the same force and effect as if fully set forth herein.

35. Defendants cavity-searched plaintiff DWAYNE COOPER in the absence of any individualized reasonable suspicion that plaintiff was concealing weapons or contraband.

36. As a result of the foregoing, plaintiff DWAYNE COOPER was subjected to an illegal and improper cavity search.

37. Defendants strip-searched plaintiff DWAYNE COOPER in the absence of any

individualized reasonable suspicion that plaintiff was concealing weapons or contraband.

38. As a result of the foregoing, plaintiff DWAYNE COOPER was subjected to an illegal and improper strip search.

39. The foregoing unlawful cavity search and strip search violated plaintiff DWAYNE COOPER's constitutional right to privacy, as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

FOURTH CLAIM FOR RELIEF
MALICIOUS PROSECUTION UNDER 42 U.S.C. § 1983

40. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "39" with the same force and effect as if fully set forth herein.

41. Defendants misrepresented and falsified evidence before the District Attorney.

42. Defendants did not make a complete and full statement of facts to the District Attorney.

43. Defendants withheld exculpatory evidence from the District Attorney.

44. Defendants misrepresented and falsified evidence before the Grand Jury.

45. Defendants did not make a complete and full statement of facts to the Grand Jury.

46. Defendants withheld exculpatory evidence from the Grand Jury.

47. Defendants were directly and actively involved in the initiation of criminal proceedings against plaintiff DWAYNE COOPER.

48. Defendants lacked probable cause to initiate criminal proceedings against plaintiff DWAYNE COOPER.

49. Defendants acted with malice in initiating criminal proceedings against plaintiff DWAYNE COOPER.

50. Defendants were directly and actively involved in the continuation of criminal proceedings against plaintiff DWAYNE COOPER.

51. Defendants lacked probable cause to continue criminal proceedings against plaintiff DWAYNE COOPER.

52. Defendants acted with malice in continuing criminal proceedings against plaintiff DWAYNE COOPER.

53. Defendants misrepresented and falsified evidence throughout all phases of the criminal proceeding.

54. Notwithstanding the perjurious and fraudulent conduct of defendants, the criminal proceedings were terminated in plaintiff DWAYNE COOPER's favor on or about February 15, 2006, when he was acquitted of all charges.

FIFTH CLAIM FOR RELIEF
MALICIOUS ABUSE OF PROCESS UNDER 42 U.S.C. § 1983

55. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "54" with the same force and effect as if fully set forth herein.

56. Defendants issued legal process to place plaintiff DWAYNE COOPER under arrest.

57. Defendants arrested plaintiff DWAYNE COOPER in order to obtain a collateral objective outside the legitimate ends of the legal process.

58. Defendants acted with intent to do harm to plaintiff DWAYNE COOPER without excuse or justification.

SIXTH CLAIM FOR RELIEF
FAILURE TO INTERVENE

59. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "58" with the same force and effect as if fully set forth herein.

60. Each and every individual defendant had an affirmative duty to intervene on plaintiff DWAYNE COOPER's behalf to prevent the violation of his constitutional rights.

61. The individual defendants failed to intervene on plaintiff DWAYNE COOPER's behalf to prevent the violation of his constitutional rights despite having had a realistic opportunity to do so.

62. As a result of the aforementioned conduct of the individual defendants, plaintiff DWAYNE COOPER's constitutional rights were violated and he was subjected to false arrest and malicious prosecution.

SEVENTH CLAIM FOR RELIEF
DENIAL OF CONSTITUTIONAL RIGHT TO FAIR TRIAL
UNDER 42 U.S.C. § 1983

63. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "62" with the same force and effect as if fully set forth herein.

64. Defendants created false evidence against plaintiff DWAYNE COOPER.

65. Defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

66. Defendants misled the Grand Jury, the trial judge, and the prosecutors by providing false testimony and proffering false evidence throughout the criminal proceedings.

67. In creating and forwarding false information to prosecutors, defendants violated plaintiff DWAYNE COOPER's constitutional right to a fair trial under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

EIGHTH CLAIM FOR RELIEF
MUNICIPAL LIABILITY

68. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "67" with the same force and effect as if fully set forth herein.

69. Defendants arrested and incarcerated plaintiff DWAYNE COOPER in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that said arrest and incarceration would jeopardize plaintiff's liberty, well-being, safety and constitutional rights.

70. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials, with all the actual and/or apparent authority attendant thereto.

71. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

72. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department include, but are not limited to, the following unconstitutional practices:

a) wrongfully arresting minority individuals on the pretext that they were involved in drug transactions;

b) manufacturing evidence against individuals allegedly involved in drug transactions;

c) strip-searching prisoners in the absence of any individualized reasonable suspicion; and

d) arresting innocent persons in order to meet "productivity goals" (i.e., arrest quotas).

73. The existence of the aforesaid unconstitutional customs and policies may be inferred from repeated occurrences of similar wrongful conduct, as documented in the following civil rights actions filed against the City of New York:

- **Corey Avent v. City of New York,** United States District Court, Eastern District of New York, 04 CV 2451;

- **Reginald McMillan v. City of New York,** United States District Court, Eastern District of New York, 04 CV 3990;
- **Michael A. Smith v. City of New York,** United States District Court, Eastern District of New York, 04 CV 1045;
- **Benyamin Taylor v. City of New York,** United States District Court, Eastern District of New York, 01 CV 5750;
- **Heyward Dotson v. City of New York,** United States District Court, Southern District of New York, 03 Civ. 2136;
- **Theodore Richardson v. City of New York,** United States District Court, Eastern District of New York, 02 CV 3651.

74. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constituted a deliberate indifference to the safety, well-being and constitutional rights of plaintiff DWAYNE COOPER.

75. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by plaintiff DWAYNE COOPER as alleged herein.

76. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the constitutional violations suffered by plaintiff DWAYNE COOPER as alleged herein.

77. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiff DWAYNE COOPER was falsely arrested and maliciously prosecuted.

78. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of plaintiff DWAYNE COOPER.

79. Defendants, collectively and individually, while acting under color of state law,

acquiesced in a pattern of unconstitutional conduct by subordinate police officers, and were directly responsible for the violation of plaintiff DWAYNE COOPER's constitutional rights.

80. All of the foregoing acts by defendants deprived plaintiff DWAYNE COOPER of federally protected rights, including, but not limited to, the right:

A. Not to be deprived of liberty without due process of law;

B. To be free from seizure and arrest not based upon probable cause;

C. To be free from unlawful search;

D. To be free from unwarranted and malicious criminal prosecution;

E. To be free from malicious abuse of process;

F. Not to have cruel and unusual punishment imposed upon him; and

G. To receive equal protection under the law.

81. As a result of the foregoing, plaintiff DWAYNE COOPER is entitled to compensatory damages in the sum of three million dollars ($3,000,000.00) and is further entitled to punitive damages against the individual defendants in the sum of three million dollars ($3,000,000.00).

WHEREFORE, plaintiff DWAYNE COOPER demands judgment in the sum of three million dollars ($3,000,000.00) in compensatory damages and three million dollars ($3,000,000.00) in punitive damages, plus reasonable attorney's fees, costs, and disbursements of this action.

Dated: New York, New York
May 4, 2006

[signature]
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